

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF SOUTH CAROLINA
CASE NO. _____

DHW PURCHASING GROUP, LLC)
DBA CAROLINA POUR HOUSE and)
DANIEL WELLS,)

3:19-cv-01243-CMC

Plaintiffs,)

vs.)

**NOTICE OF REMOVAL
(DIVERSITY OF CITIZENSHIP)
28 U.S.C. § 1446(a)**

KEENANSUGGS INSURANCE,)
ALL RISKS, LTD., and)
THE BURLINGTON INSURANCE)
COMPANY,)

Defendants.)

**TO: THE HONORABLE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF SOUTH CAROLINA**

The Defendant, The Burlington Insurance Company (“TBIC”), by and through counsel, hereby gives notice pursuant to 28 U.S.C. §§ 1332, 1367, 1441, and 1446, that it has removed the action entitled “*DHW Purchasing Group, LLC dba Carolina Pour House and Daniel Wells v. KeenanSuggs Insurance, All Risks, Ltd., and The Burlington Insurance Company*,” filed in the Court of Common Pleas, Richland County, South Carolina, C.A. No. 2019-CP-40-01542 (the “State Court Action”), to the United States District Court for the District of South Carolina. A copy of this Notice of Removal is being filed with the Clerk of Court for the Court of Common Pleas, Richland County, South Carolina, where the action is currently pending, in order to effect removal pursuant to 28 U.S.C. § 1446(b). Pursuant to 28 U.S.C. § 1446(d), the State Court Action shall proceed no further unless and until this case is remanded.

Grounds for Removal

1. This action was filed in the Court of Common Pleas, Fifth Judicial Circuit, County of Richland, South Carolina on March 18, 2019.¹ A copy of the entire contents of the Richland County file in the State Court Action is attached hereto as **Exhibit 1**.

2. The Complaint in the State Court Action was received by TBIC, at the earliest, on April 1, 2019. This Notice of Removal is being filed within thirty (30) days of the date that the Complaint was received by TBIC. 28 U.S.C. §§ 1446(b).

3. This case is removable under 28 U.S.C. § 1332 (“Diversity of Citizenship”) because there is complete diversity of citizenship between the Plaintiffs and the Defendants, and the amount in controversy exceeds \$75,000, exclusive of interest and costs. *See* Compl. ¶¶ 1–5, 32, and 36.

4. Plaintiff Daniel Wells is a citizen and resident of the State of South Carolina.

¹ TBIC previously filed a declaratory judgment action in the U.S. District Court for the District of South Carolina, captioned “*The Burlington Insurance Company v. Daniel Halsey Wells, IV et al.*,” Case No. 3:18-cv-1351-CMC (the “TBIC Coverage Action”), seeking an adjudication concerning the rights and obligations of the parties under a commercial policy of insurance, policy no. 740BW37405, effective from October 23, 2016 to October 23, 2017 (the “TBIC Policy”) with respect to claims asserted against DHW Purchasing Group, LLC dba Carolina Pour House (“DHW”) and Daniel Wells, in a civil action captioned “*Ryan Chisolm v. Daniel Halsey Wells IV, et al.*,” Case No. 2017-CP-40-02512, in the Court of Common Pleas for Richland County, SC (the “Underlying Chisolm Lawsuit”). After TBIC filed a Motion for Judgment on the Pleadings in the TBIC Coverage Action, DHW and Wells entered into a Stipulation of Dismissal without Prejudice in the Underlying Chisolm Lawsuit, and filed a Motion to Dismiss the TBIC Coverage Action on the grounds that the coverage issues raised in the TBIC Coverage Action were either moot or not ripe for adjudication because the Underlying Chisolm Lawsuit had been dismissed. Based upon DHW and Wells’ Motion to Dismiss, the TBIC Coverage Action was dismissed on January 9, 2019. Although The Underlying Chisolm Lawsuit remains dismissed, DHW and Wells have now filed the present action in South Carolina state court, which raises the same coverage issues previously raised in the TBIC Coverage Action, and which DHW and Wells previously claimed were moot or not ripe because the Underlying Chisolm Lawsuit had been dismissed. Therefore, it appears that DHW and Wells have changed their position that a determination of the rights and obligations of the parties under the TBIC Policy in relation to the Underlying Chisolm Lawsuit is moot or not ripe for adjudication based upon the dismissal of the Underlying Chisolm Lawsuit.

Compl. ¶ 2.

5. Plaintiff DHW Purchasing Group, LLC d/b/a Carolina Pour House (“DHW”), is a limited liability company organized under the laws of the State of South Carolina. Compl. ¶ 1. The principal place of business for DHW is located in Columbia, South Carolina. The sole member and manager of DHW is Daniel Wells, who is a citizen and resident of the State of South Carolina. Compl. ¶ 2.

6. TBIC is a corporation organized and existing under the laws of the State of Illinois. The principal place of business for TBIC is located in Burlington, North Carolina. Compl. ¶ 5.

7. Defendant All Risks, Ltd. (“All Risks”) is a corporation organized and existing under the laws of the State of Maryland. Compl. ¶ 4. The principal place of business for All Risks is located in Maryland.

8. Defendant KeenanSuggs Insurance (“KeenanSuggs”) as named in the Complaint is a non-entity. Compl. ¶ 3. Rather, KeenanSuggs is a trade name for the insurance operations of HUB International Midwest Limited (“HUB”), which is a corporation organized and existing under the laws of the State of Illinois, with its principal place of business in the State of Indiana.

9. Accordingly, the Plaintiffs are citizens and residents of South Carolina; and Defendant TBIC is a citizen and resident of Illinois and North Carolina, Defendant All Risks is a citizen and resident of Maryland, and Defendant KeenanSuggs (to the extent properly named as a defendant in this action) is a citizen and resident of Illinois and Indiana. Therefore, there is complete diversity of citizenship between the Plaintiffs and the Defendants in this action.

10. The amount in controversy in this action exceeds the sum of \$75,000, exclusive of interest and costs, inasmuch as the Plaintiffs assert claims for Breach of Contract, Breach of

Contract Accompanied by Fraudulent Acts, Bad Faith Refusal to Pay First-Party Benefits, Improper Claims Practices, Negligence and Gross Negligence, and Constructive Fraud against the Defendants and seek coverage under commercial liability insurance policies with aggregate limits of liability of \$2,000,000 for claims that have been asserted against the Plaintiffs in underlying tort litigation.

11. Defendants All Risks and KeenanSuggs have consented and join in this removal of the State Court Action to the United States District Court for the District of South Carolina.

12. Copies of this Notice are being served on all adverse parties and a copy hereof is being filed with Clerk of the Richland County Court of Common Pleas, all in accordance with the provisions of 28 U.S.C. § 1446(d).

13. A copy of the Notice of Filing of Notice of Removal to be filed in the Court of Common Pleas, Fifth Judicial Circuit, County of Richland, South Carolina, is attached hereto as **Exhibit 2**.

WHEREFORE, Defendant The Burlington Insurance Company hereby removes the State Court Action to the United States District Court for the District of South Carolina.

This the 29th day of April, 2019.

GOLDBERG SEGALLA LLP

/s/ David G. Harris II

David G. Harris II (S.C. Federal Bar No. 12039)

David L. Brown (N.C. State Bar No. 18942)

800 Green Valley Road, Suite 302

Greensboro, North Carolina 27408

Telephone: 336.419.4900

Facsimile: 336.419.4950

dharris@goldbergsegalla.com

dbrown@goldbergsegalla.com

Attorneys for Defendant

The Burlington Insurance Company

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the foregoing Notice of Removal was served upon all counsel of record via first class mail, postage prepaid, addressed as follows:

Michael H. Montgomery
MONTGOMERY WILLARD, LLC
1002 Calhoun Street
Post Office Box 11886
Columbia, South Carolina 29201
Telephone: 803.779.3500
mhm@montgomerywillard.com
Attorney for Plaintiffs

F. Matlock Elliott
HAYNSWORTH SINKLER BOYD, P.A.
ONE North Main, 2nd Floor
Greenville, South Carolina 29601
Telephone: 864.240.3240
melliott@hsblawfirm.com
Attorney for Defendant KeenanSuggs

David W. Overstreet
Robert C. Blain
EARHART OVERSTREET LLC
P.O. Box 22528
Charleston, South Carolina 29413
Telephone: 843.972.9400
robert.blain@earhartoverstreet.com
david.overstreet@earhartoverstreet.com
Attorneys for Defendant All Risks

This the 29th day of April, 2019.

GOLDBERG SEGALLA LLP

/s/ David G. Harris II
David G. Harris II
S.C. Federal Bar No. 12039
800 Green Valley Road, Suite 302
Greensboro, North Carolina 27408
Telephone: 336.419.4900
dharris@goldbergsegalla.com
Attorney for Defendant
The Burlington Insurance Company